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EXAMINER
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DAVIS, CASSANDRA HOPE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVID KOELLER

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Appeal 2009-005872  
Application 10/681,635  
Technology Center 3600

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Before: WILLIAM F. PATE III, JENNIFER D. BAHR, and  
FRED A. SILVERBERG, *Administrative Patent Judges*.

PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

The claims are directed to magnetic image assembly to mount on garage door panels and a system and a method for decorating a garage door.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

1. A magnetic cover assembly for mounting on two or more garage door panels, the assembly comprising:

a first sheet having a first planar side and a second planar side wherein the first planar side of the first sheet is oppositely juxtaposed to the second planar side of the first sheet wherein the first planar side of the first sheet is attached to the second planar side of the first sheet with a bonding layer wherein the first planar side of the first sheet is a first magnetic layer to removably and magnetically attach the first sheet to a first garage door panel wherein the first planar side of the first sheet has a first thickness defined between a top surface and a bottom surface of the first planar side of the first sheet wherein the bottom surface of the first planar side contacts the first garage door panel wherein the second planar side of the first sheet has a second thickness defined between a front surface and a rear surface of the second planar side of the first sheet wherein the rear surface is adjacent to the top surface of the first planar side of the first sheet and further wherein the first thickness is greater than the second thickness; and

a second sheet having a first planar side and a second planar side wherein the first planar side of the second sheet is oppositely juxtaposed to the second planar side of the second sheet wherein the first planar side of the second sheet is a second magnetic layer to removably and magnetically attach the second sheet to a second garage door panel wherein the second sheet has a length defined by a first end and a second end wherein the second sheet has a width defined between a top end

and a bottom end wherein the length is greater than the width wherein the first sheet and the second sheet align to create an image encompassing the first garage door panel and the second garage door panel wherein the first sheet and the second sheet have no wires and are not electrically connectable.

## REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Marshall	US 5,503,891	Apr. 2, 1996
Zinbarg	US 5,943,803	Aug. 31, 1999
Blyden	US 6,217,958 B1	Apr. 17, 2001
Vella	US 2005/0055921 A1	Mar. 17, 2005

## REJECTIONS

Claims 1-3, 7-12, and 14-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vella, Zinbarg, and Marshall. Ans. 3.

Claims 4-6, 13, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Vella, Zinbarg, Marshall, and Blyden. Ans. 5.

## OPINION

We have carefully reviewed the rejections on appeal in light of the arguments of the Appellant and the Examiner. As a result of this review, we have determined that the applied prior art establishes the prima facie obviousness of claims 1-20. The Appellant has not rebutted the showing of prima facie obviousness with additional evidence. Therefore, the rejections of all claims on appeal are affirmed. Our reasons follow.

The following are our findings of fact with respect to the scope and content of the prior art and the differences between the prior art and the claimed subject matter.

Vella discloses a magnetic cover assembly for mounting on a garage door panel. The cover assembly includes a first sheet having a first planar side of magnetic material 30 and a second planar side 40 with the second planar side displaying a graphic representation 50. *See* paras. [0059]-[0064]. Further note that Figure 1a of Vella discloses three such panels or sheets secured to a single garage door. Vella differs from the claimed subject matter in that it does not show a garage door with four horizontal panels stacked vertically to form a cover for the entire garage opening. Vella also differs from the claimed subject matter in that Vella does not teach a bonding layer between the first magnetic layer and the second layer with the graphic representation.

Zinbarg discloses a garage door decorative cover assembly 10 attached to a garage door 12. Each of the four garage door panels 14, 16, 18, and 20 are covered by four cover panels 32, 34, 36, and 38 one for each door panel of the garage door 12 on which the cover assembly 10 is to be attached. Col. 3, ll. 15-35. The panels, when considered together, form a unified decorative design that can be customized to the size of the panels and which depicts a seasonal holiday or celebratory theme. Col. 3, l. 65 – col. 4, l. 5. The four cover panels 32, 34, 36, and 38 are attached to the door panels 14, 16, 18, and 20 by double-sided foam tape. Col. 4, ll. 29-36. Zinbarg differs from the claimed subject matter in that the panels of Zinbarg are attached to the garage door with double-sided foam tape rather than a magnetic means. Zinbarg further differs from the claimed subject matter in that Zinbarg does not show three layers of material making up the four cover panels with a bonding layer as the central layer.

Marshall discloses a flexible magnet attractant display mat 10 comprised of a first sheet having a first layer, magnet attractant substrate 14-

-a ferrous or ferrite filled polymer sheet, and a second layer composed of a writeable display surface 12 that can have a graphic representation silk-screened thereto, wherein the first and second layers are held together with a bonding layer of adhesive. *See* col. 2, ll. 8-14, and ll. 40-61. While Marshall teaches two layers fused together by a bonding layer in between, Marshall does not show the first layer as having a first planar side with magnetic material. Marshall merely discloses a first planar side containing ferrite which permits magnet strips, marks and symbols to be attached to the display mat.

In our view, the claimed subject matter is *prima facie* obvious from the combined teachings of Vella, Zinbarg and Marshall. Vella discloses a plurality of magnetic panels attached to a garage door. Zinbarg teaches that each panel of an articulated garage door can have a decorative panel attached thereto, while Marshall discloses that a multilayer panel can be comprised of one layer with magnetic attractants, which is similar to the magnetic layer of Vella, and a second graphic layer similar to the second graphic layers of Zinbarg and Vella with an intermediate bonding layer therebetween to secure the two layers together. In our view, the claimed subject matter is merely the combination of prior art elements according to known methods which would have yielded a predictable result.

On page 15 of the Appeal Brief, Appellant argues that none of Vella, Zinbarg or Marshall taken singly or in combination teach two planar sides with a bonding layer therebetween. This is erroneous. Marshall clearly discloses two layers with a bonding layer therebetween. Appellant further argues that the references taken singly or in combination do not teach or suggest a first planar side of a first sheet that is a first magnetic layer. App. Br. 15. This too is erroneous in that Vella clearly discloses such a magnetic

layer. Appellant further argues that none of the references taken singly or in combination teach a second sheet with a second magnetic layer. App. Br.

16. We note that Vella discloses three separate panels or sheets attached to a single garage door. Thus, not only does Vella teach a second sheet with a second magnetic layer, it teaches a third sheet with one also.

With respect to claim 10, Appellant argues that none of Vella, Zinbarg or Marshall, taken singly or in combination teach or suggest a plurality of magnetic sheets. App. Br. 18. Vella clearly discloses three magnetic sheets in Figure 1a. While the Examiner has admitted that Vella does not disclose a garage doors with multiple panels, Zinbarg clearly discloses this feature. Once again Appellant argues that none of the references singly or in combination teach a bonding layer. App. Br. 19. As noted above, this argument is unpersuasive.

With respect to claim 15, Appellant states that none of the references singly or in combination teach the step of printing a plurality of segmented images on a corresponding plurality of magnetic sheets. App. Br. 19-20. Zinbarg clearly discloses printing segmented images on corresponding pluralities of layered cover panels for a garage door. Inasmuch as Vella teaches fastening these cover panels to the door via magnetic attraction, the method of claim 15 is *prima facie* obvious over the combination. Appellant further argues that a person of ordinary skill would not have been motivated to combine the references. App. Br. 22. We note that the Supreme Court has stated that a rigid and mandatory reliance on teaching, suggestion or motivation is incompatible with its precedent. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 402 (2007).

It is noted while reviewing Appellant's arguments that Appellant consistently and repeatedly argues the references individually where the

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rejection is based on a combination of references. However, non-obviousness cannot be established by attacking references individually, where the rejection is based upon the teachings of a combination of references. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) (citation omitted).

With respect to the rejection of claims 4-6, 13, 19 and 20, Blyden teaches a decorative ornament 1 with a magnetic layer 8 and a weather resistant first layer having a top surface 3 with an ink or printed design thereon. Col. 3, ll. 1-18. Blyden further discloses that the design can be in vinyl paint, illuminated paint, reflective paint or a photographic picture. *See* col. 4, ll. 33-42. In our view, it would have been obvious at the time the invention was made to have made the graphic design of Vella or Zinbarg in the manner suggested by Blyden, that is, by printing with a protective layer and using reflective, illuminated, or vinyl paint or a photographic image. Accordingly, in our view, the subject matter of claims 4-6, 13, 19 and 20 is *prima facie* obvious.

With respect to this rejection, Appellant individually attacks the references and insists on a teaching, suggestion or motivation to combine these references. *See* App. Br. 39-41. As noted above, these arguments are not persuasive.

## DECISION

The rejections of claims 1-20 under 35 U.S.C. § 103(a) are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).



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AFFIRMED

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